IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 582 OF 2004

Khalil Ahmed M. Yusuf Fakir ... Appellant

V/s

Sitaram Dnyandeo Jadhav & anr. ... Respondents

Mr. A.A. Kumbhakoni with A.P. Kulkarni for the appellant.

Mr. G.R. Rege for the respondent No.1.
Mr. N.D. Hombalkar for the respondent No.2.

CORAM: P.V. KAKADE, J.

DATED: 11TH JULY, 2005

P.C.:

1. The appellant has filed this appeal against the judgment and order passed by the Addl. District Judge, Karad, dated 6.3.2004 allowing the appeal and setting aside the judgment and order passed by the Civil Judge, Jr.Divn., Karad dated 20.8.1999 by which suit came to be decreed and perpetual injunction came to be passed against the defendants.

2. I have heard the learned counsel for both parties. Perused the record.

3. The plaintiff filed the suit for declaration with regard to the sale deed dated 27.9.1996 executed by defendant No.1 in favour of defendant No.2 to the effect that it is void and illegal being executed during pendency of the suit.

4. The plaintiff came with the case that he was tenant in the suit property of defendant No.1 and since defendant No.2 was obstructing his possession, the suit for perpetual injunction came to be filed. Pending the suit, the defendant No.1 sold property to defendant No.2 and, therefore, the suit came to be filed seeking declaration that the sale deed was void and illegal as it was executed between defendants 1 and 2 pending the suit and thus was not binding on the plaintiff.

5. The learned Trial Judge after hearing both parties on the basis of evidence, came to the conclusion that the plaintiff had proved that he was in possession of the suit property and defendant No.1 had threatened his possession. However, it was held that the sale deed between defendants 1 and 2 could not be declared as void and, as such, the plaintiff’s plea to that extent came to be rejected and decree for perpetual injunction was

passed. The appeal was carried to the District Court. The Addl. District Judge, after hearing both parties came to the conclusion that the plaintiff had failed to prove his tenancy over the suit property as well as his possession therein and as such it was held that the suit was liable to be dismissed. Accordingly, the appeal was allowed and order passed by the Trial Court was set aside. Hence the present appeal.

6. At the outset, it must be noted that there is no substantial question of law involved in this appeal. The only point raised on behalf of the appellant was to the effect that since the evidence on record was sufficient to show that plaintiff was in lawful and settled possession of the suit property, his possession should be protected. Recourse is availed of to oust him from the suit property by due legal process.

However, the evidence on record, as rightly discussed by the lower appellate Court Judge, leaves no doubt whatsoever to show that the plaintiff is not in possession of the suit property and his alleged plea of tenancy was also held to be not established. It was observed by the lower appellate Court that the plaintiff had admitted that there is no lease agreement executed

between the parties and in the course of his cross-examination plaintiff had admitted that there were no rent receipts received by the defendant alleging that he paid the rent. In other words, there is not an iota of evidence to show that there was relationship between the parties that of lessor and lessee. The lower appellate Court has further proceeded to appreciate the documentary evidence on record which was sufficient to show that the defendant No.1 was seen to be in possession of the suit property lying on the Western side of the land i.e. the subject matter of the sale deed and on that basis it was held that the plaintiff failed to establish his plea of tenancy right over the suit property. Similarly, the report of the Court Commissioner was also rejected which showed that there were only temporary structures apparently raised at the time of Commission work and, therefore, the appellate Court has come to the conclusion that possibility could not be ruled out that the plaintiff might have tampered with the suit property at the time of Court Commission. On such and other aspects it was held that the plaintiff had failed to prove that he was in possession of the suit property.

7. In this regard, it must be noted that perusal of the

judgment of the lower appellate court shows that available evidence on record is properly appreciated. It is needless to mention that the High Court cannot substitute its own finding on reappreciation of evidence merely on the ground that another view was possible. It is also to be noted that it is not within the domain of the High Court to investigate the ground on which the findings were arrived at by the last Court of fact being the first appellate Court. This is especially so when the reasoning adopted by the lower appellate Court appears to be based on cogent evidence on record and, therefore, I am of the considered view that no interference is required in the order passed by the lower appellate Court.

8. In the result, the appeal has no merits and deserves to be dismissed. Hence, the appeal stands dismissed with no order as to costs. Consequently, the Civil Application No. 647 of 2004 also stands dismissed with no order as to costs.

Interim order, if any, standa vacated.

C. c. expedited.

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